

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

MFA.No. 1350 of 2001()

OPMV.326/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PARAVUR
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APPELLANT:

HASANAR, S/O.KUNJIKKADAR,
PUNNEKKAL VEETIL, VALLURULLYKARA,
KOTTUVALLY VILLAGE.

BY ADV. SRI.T.P.VARGHESE

RESPONDENTS:

1. ROMY, S/O.RAGHAVAN,
KARATHATT VEETIL,
KOONAMMAVUKARA, KOTTUVALLY VILLAGE.
2. UNITED INDIA INSURANCE CO.LTD.,
BRANCH OFFICER, NORTH PARAVOOR.

BY ADV. SMT.NARAYANIKUTTY CHETTOOR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 19/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.1350 OF 2001

Dated this the 19th day of December, 2007

JUDGMENT

Koshy, J.

Appellant-petitioner suffered serious injuries in a motor accident at the age of 24. He claimed a compensation of Rs.3,00,000/-. But the Tribunal awarded only Rs.1,08,000/-. The Tribunal found that the accident occurred due to the negligent driving of the motor cycle by the first respondent and the above vehicle was insured by the second respondent Insurance Company. The only dispute is regarding the quantum of compensation. According to the appellant, he was aged 24 at the time of accident. He was driving his own auto rickshaw during the relevant time. He was getting Rs.4,500/- per month. But the Tribunal has assessed only Rs.2,000/- as the monthly income. It is the case of the petitioner that being an auto rickshaw driver, he would get minimum Rs.150/- per day. He was an auto rickshaw driver-cum-owner and the accident occurred on 12.1.2000. We are of opinion that the Tribunal ought to have fixed atleast Rs.3,000/- as the monthly income. He has produced licence, badge etc. to show that he was a professional qualified auto rickshaw driver.

2. As far as his injuries are concerned, he has suffered Gr.III compound comminuted fracture of both bones of the ® leg. He was operated twice and bone grafting was done and implant inserted. The Medical Board certified 20% disability. But the Tribunal has taken only 7% as the disability. There was shortening of the leg. The Tribunal also noted that there were several wound scars on the (R) lower limb of the petitioner and there was still oedema. The Tribunal did not accept the certificate, since none of the members of the Medical Board treated him. The above reasoning cannot be accepted. The assessment of permanent disability need not be done by the doctors who treated the patient. But at the time of assessment, implant was not taken away. The Tribunal himself has noticed that at the time of evidence, the petitioner has difficulty in walking. Since there was shortening of leg, we are of the view that atleast 10% assessment should be made by the Tribunal. If that be so, compensation payable for disability will be:

$$\frac{3000 \times 12 \times 10 \times 17}{100} = 61,200/-.$$

3. The Tribunal has granted only Rs.28,560/-. So, the additional compensation payable will be Rs.32,640/-. We are of opinion that compensation granted under other heads are just and reasonable

and no enhancement is necessary. The above additional amount of Rs.32,640/- should be deposited by the second respondent Insurance Company with 7.5% interest from the date of application till the date of deposit, over and above the amount decreed by the Tribunal. On deposit of the above amount, the appellant is allowed to withdraw the same. The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1350 OF 2001

JUDGMENT

19.12.2007